

Submission to IPART Regarding Sydney Water's Compliance and Operational Model

Introduction

We write on behalf of our clients (who are private individuals and home owners) to express concern regarding Sydney Water's compliance with the requirements of the Sydney Water Act 1994, its Operating Licence, and Customer Contract. This submission is in response to IPART's ongoing enquiry into Sydney Water's operations and pricing proposals.

We note the time to lodge this submission was extended to today.

Failure to Fulfill Obligations

Sydney Water is enabled by the Sydney Water Act 1994 and is required to provide safe, reliable, and efficient water and wastewater services to its customers.

To this end, Sydney Water is the sole owner of substantial water and sewer assets (**water assets**), including assets located on properties owned by third parties. In this regard, Sydney Water has a monopoly on water assets.

However, there is significant evidence that Sydney Water is not meeting these obligations nor managing their monopoly on water assets in an appropriate manner.

IPART has already highlighted several significant areas where Sydney Water's performance has been subpar. Our clients' experience is a specific example of multiple failures by Sydney Water.

Issues with the Outsourced Water Services Coordinator Model

Due to Sydney Water's monopoly with respect to water assets, it is on occasion required to consider, approve and/or consent to developments which may be adjacent to, over or may affect water assets. Sydney Water has sought to outsource this approval and consent function to Water Services Coordinators (WSC) whom they have appointed as their exclusive agents.

The WSC model outsources significant regulatory responsibilities to third-party coordinators who act as agents for Sydney Water.

It is our clients' experience that the approach is not delivering appropriate environmental, asset or service delivery outcomes.

The WSC model has the effect of delegating Sydney Water's exclusive and monopoly regulatory duties and fundamentally undermines the accountability and transparency required for effective regulation and service delivery.

The model also serves to significantly and inappropriately transfer risk to WSCs and costs to customers, exploiting the statutory monopoly position of Sydney Water.

Specific Failures

- 1. Maladministration:** Our clients received specific development approval from the Local Council and also from Sydney Water (by their delegated WSC) to undertake construction of their home, which they commenced. The approval is acknowledged by Sydney Water and is relied upon by various third parties. Sydney Water has since ignored the approval and acted with complete disregard to the environmental risk and consequences to our clients. Notably the approach taken by Sydney Water has left a critical Sydney Water asset (main sewer line adjacent to an open harbour) exposed for over 2 years in a significant environmental zone over which our clients have no power or control and presents an extreme environmental risk. The approach taken by Sydney Water has also created significant construction delays and associated costs to our clients.
- 2. Inaccurate Data Sets:** The data sets upon which Sydney Water relies are inaccurate, which Sydney Water acknowledges. We understand this remains a persistent issue, affecting the reliability of information used for planning and operational decisions. Over several decades Sydney Water has spent significant funds trying to correct their inaccurate data, without success. Sydney Water now inappropriately uses its monopoly position to pass costs and accountability to third parties (WSCs) and customers as a mechanism to address Sydney Water's data management failures and associated mismanagement.
- 3. Customers are not a source of funds:** Our clients have experienced at minimum mismanagement and at worst bullying by the monopoly approach taken by Sydney Water, which can be described as *"make it up as they go along"*. Furthermore, our clients have met with various Sydney Water accredited firms that 'off the record' indicate that if they speak up about the failures of Sydney Water, they will not get further work from Sydney Water. A further example of this, despite on-going interactions over 2 years in relation to our clients' issues, and over 6 months of trying to obtain clarity from their legal representatives, we received legal correspondence on the 22nd December 2024, the timing of which can only be interpreted and designed to intimidate and add to the very real financial and emotional concerns of our clients over the Christmas period.
- 4. Failure of the Complaints System and Concerns for Staff Welfare:** Our clients have engaged numerous times with Sydney Water's complaints systems without success over a period of 18 months. The separation of the "Development" function and the "Networks" function results in confusion,

miscommunication, unnecessary costs and delay. Several “Development” staff have indicated the distress they have at our clients’ position, to the point where a Sydney Water staff member broke-down in a meeting. Despite the Senior Executive and Managing Director being fully aware of the critical nature of the Sydney Water asset, environmental risk, and the impact on our clients, there is no timeframe for resolution, meaning litigation by our clients is imminent, as their attempts to engage with Sydney Water have proven to be futile.

Examples of other Sydney Water's Failures

1. **Management Failures:** Sydney Water has been criticised for its handling of flood risks, asset maintenance, maintenance response times, service delivery quality and a host of other issues. Publicly available information suggests deep and concerning internal management issues.
2. **Environmental Compliance Issues:** Sydney Water has faced legal action for failing to comply with environmental regulations. For example, in 2020, Sydney Water pleaded guilty to offences under the Protection of the Environment Operations Act for failing to comply with its environmental protection licence. This included a failure to manage sewage overflows, which had significant environmental impacts.
3. **Industrial Actions:** Sydney Water has been embroiled in industrial disputes, with workers taking strike action due to failed negotiations over pay and conditions. Industrial issues highlight the dissatisfaction amongst employees and the operational disruptions caused by these disputes. The industrial actions include stoppages of work and bans on various operational activities, severely impacting service delivery.

Price Increases and Inefficiencies

Our clients, in the approval process through Sydney Water’s WSC, incurred significant expense in:-

- a) Obtaining reports from Sydney Water appointed authorised contractors to investigate the sewer pipe;
- b) Obtaining additional specialist reports as required by the WSC;
- c) meeting the costs of the above as well as the WSC’s costs in obtaining the Sydney Water approval.

Notwithstanding the above costs incurred by our client prior the approval, Sydney Water then required our clients obtain additional reports and undertake additional investigations, at considerable additional cost to our clients. It is unclear on what basis our clients ought to be liable for any costs after an approval is granted by

Sydney Water or why a customer could or ought to meet Sydney Water's costs associated with their own asset.

The proposal to increase prices for Sydney Water's services is therefore particularly concerning, when their current conduct is to force, through their monopoly powers and sole ownership of water assets, costs to the consumer in any event .

Approving price hikes in the current context of multiple and on-going management failures simply rewards inefficiencies and mismanagement and does not take into account the fact that by the WSC model, Sydney Water are forcing customers to pay for approvals and development applications, as set out above, in any event.

Customers should not bear the financial burden of Sydney Water's operational failures and inefficiencies. Instead, there should be a focus on improving internal processes and ensuring that Sydney Water meets its legislative and contractual obligations before any consideration of price increases.

Recommendations

1. **Review and Reform the WSC Model:** It is imperative to review the outsourced WSC model and ensure that Sydney Water maintains direct regulatory responsibility for its actions. This would enhance accountability and ensure that Sydney Water directly manages its regulatory obligations. Sydney Water further need to take responsibility for approvals granted and abide by them.
2. **Reject Price Increases:** IPART should reject any proposed price increases until Sydney Water demonstrates significant improvements in efficiency and compliance with its statutory and other obligations. This includes that risk should not be transferred to third-party providers (WSCs) and customers should not be penalised for the operational shortcomings and leveraged to fund existing internal failures, which are within the direct control of Sydney Water and for which Sydney Water are accountable.
3. **Consider Alternative Operational Structures:** Given the ongoing issues, IPART should consider recommending the cancellation of Sydney Water's Operating Licence. Sydney Water has failed its charter and continues to do so. Sydney Water are currently trying to prevent our clients' continuing with their approved development pending claims by Sydney Water that they have some obligation to improve Sydney Water's assets, contrary to the Sydney Water approval given. An alternative model includes multiple locally-based water and sewer operators. A decentralised approach could improve service delivery and accountability by focusing on smaller, more manageable catchment areas and address the

potential inappropriate behaviours that stem from the antiquated statutory monopoly and management approach.

Conclusion

Our clients' ongoing experience with Sydney Water's current operational model and performance raise serious concerns about Sydney Water's conduct to date and ability to fulfill its legislative obligations. The failure of the outsourced WSC model and the proposal to increase prices, despite obvious organisational and management failures, is particularly troubling.

On behalf of our clients, we urge IPART to take these issues into account and consider the recommendations provided to ensure that Sydney Water either operates in a manner that serves the best interests of its customers and complies with its regulatory framework or Sydney Water be dissolved and replaced by contemporary organisations who can deliver.

Thank you for considering this submission.

6 January 2025